IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20474 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOHAMMED RAFIQ ABDUL REHMAN MEMON - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR MM TIRMIZI for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,
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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 25/11/2005

ORAL JUDGMENT

1. Mohammed Rafiq Abdul Rehman Memon-petitioner-detenu has filed this habeas corpus

petition challenging the order of detention dated 07.09.2005 passed by Commissioner of Police, Ahmedabad city under the provisions of sub-Section (2) of Section 3 of the Gujarat Prevention of Anti-social Activities Act, 1985 (hereinafter referred to as the 'PASA Act')which is illegal, null, void and also violative of Article 14,19, 21 and 22 of the Constitution of India. The present petition was filed on 22.09.2005 and my learned brother Hon'ble Mr. Justice A.S. Dave, issued RULE on 10.10.2005 which was made returnable after four weeks and that is why this matter has come up for final hearing and disposal.

2. Heard, Mr. Imran H. Pathan, learned Advocate appearing on behalf of Mr. M.M. Tirmizi, learned Advocate for the petitioner and learned A.G.P. for respondent in this behalf.

3. Learned Advocate for the petitioner has invited my attention to the order of detention dated 07.09.2005 and also committal order dated 07.09.2005 by which petitioner-detenu was arrested and sent to

District Jail, Rajkot on the same day.

4. Learned Advocate for the petitioner has also invited my attention to the grounds supplied by the detaining authority in the said order of detention. As the grounds of detention two criminal cases have been shown as registered against the petitioner-detenu. First offence being registered as C.R. No.1467/05 at Prohibition Division (West) dated 06.09.2005 punishable under Section 66B, 65A,E, 81, and 116.1B of the Bombay Prohibition Act. In connection with that case the authority seized 60/ bottles of country liquor valued at Rs.22,500/- along with one auto-rickshaw valued at Rs.70,000/-. Second offence being registered as C.R. No.1475/05 dated 07.09.2005 punishable under Section 66B, 65A,E, 81, and 116.1B of the Bombay Prohibition Act. In that case authority seized 24 bottles of country liquor valued at Rs.7200/-, one 'Pulsar' motorcycle valued at Rs.55,000/- and one mobile phone valued at Rs.1000/- and one electric bill. In both the cases mentioned above investigation is going on.

5. Learned Advocate for the petitioner further stated that in the order of detention it was stated that the petitioner-detenu is carrying on anti-social activities and on the basis of two offences registered against the petitioner-detenu he was termed as 'Bootlegger' within the meaning of Section 2(b)of the PASA Act. It was also stated that as said bootlegging activities of the detenu are dangerous and affecting maintenance of 'public order' and 'public health', order of detention has been passed.

6. Learned Advocate for the petitioner has further stated that on the basis of two criminal cases registered against the petitioner-detenu, petitioner cannot be termed as 'Bootlegger'. In support of this learned Advocate for the petitioner has placed reliance on the judgment of the apex Court in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad City & Another reported in AIR 1989 SC 491. Learned Advocate for the petitioner has also placed reliance on Division Bench judgment of this Court in L.P.A. No. 1139 of 1999 (Coram: Acting C.J., C.K. Thakkar & K.M. Mehta,J.)decided on

04.10.1999 in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat & Others reported in 2000 (1) GLH 393 and also another Division Bench judgment of this Court in L.P.A. No.223 of 2000 (Coram: M.R. Calla & R.R. Tripathi,J.J.) decided on 22nd August, 2000 in the case of Ashok Makwana Vs. State of Gujarat. He has also relied upon a recent judgment of this Court in S.C.A. No.20420 of 2005 decided on 15.11.2005 in the case of Rajubhai Pratapbhai Panpatil Vs. Commissioner of Police, Surat City (Coram: K.M. Mehta,J.).

7. Heard, Mr. Pujari, learned A.G.P. For respomndent-detaining authority and he has filed affidavit-in-reply of one Mr. K.R. Kaushik, Police Commissioner, Ahmedabad city and has tried to defend the order of detention as well as grounds supplied therein.

8. In view of the aforesaid facts and circumstances of the case, this Court is of the view that in this case only material remains is two criminal cases registered against the petitioner-

detenu and on the basis of that it cannot be said that the activity of the petitioner-detenu has become a threat to the maintenance of 'public order' and 'public health'. The offences committed by the petitioner pertains to prohibition to which I have already made reference in my earlier part of the judgment. Mere involvement in bootlegging activites may not amount to dangerous activity by detenu and mere mention of them unless supported by any material on record cannot be said to be material and germane for the prupose of arriving at subjective satisfaction that the activity of the petitioner is prejudicial to the maintenance of 'public order' and 'public health'.

9. I have heard learned Counsels for both the parties and after perusal of the record, I am of the opinion that the detaining authority has passed the order of detention without there being any credible or cogent material on record in this behalf. I have also considered the rival submissions and the facts of the case and also in view of the judgment of the apex Court in the case of Piyush Kantilal(Supra)in this behalf. I have also considred Division Bench

Judgment of this Court in the case of the Ashok Makwana(Supra) and also recent judgment of this Court in the case of Rajubhai Pratapbhai Panpatil(Supra). In view of the facts and circumstances of the present case and also ratio laid down in the cases mentioned above, the order of detention cannot be sustained and deserves to be quashed and set aside.

10. In the result this petition is allowed and order of detention dated 07.09.2005 passed by Commissioner of Police, Ahmedabad city is hereby quashed and set aside. Mohammed Rafiq Abdul Rehman Memon-detenu is, therefore, ordered to be set at liberty forthwith, if he is not required in conecction with any other case by the authority. Rule is made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.

(K.M.MEHTA,J)

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